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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

USCG-2004-19416-35

[CGD08-04-029]

RIN 1625-AA11

Regulated Navigation Area; Ohio River Mile Marker 531.5 to
Mile Marker 720.7

AGENCY: Coast Guard, DHS.

ACTION: Temporary Regulated Navigation Area.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area for all waters of the Ohio River from mile 531.5 to mile 720.7, extending the entire width of the waterway. This regulated navigation area is needed to control vessel operations within the specified area because of the hazards created by extreme waterway congestion resulting from the closure of the McAlpine Lock and Dam, located at mile 606.8, near Louisville, KY.

DATES: This rule is effective from 6 a.m. on August 8, 2004 until 6 p.m. on September 5, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [CGD08-04-029] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg.,

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500 Poydras Street, New Orleans, LA 70131 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Kevin Lynn, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 500 Poydras Street, New Orleans, LA 70130, telephone (504) 589-6271.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Main Chamber of the McAlpine Lock and Dam, located at mile 606.8 on the Ohio River, will be closed by the U.S. Army Corps of Engineers for emergency repairs. This closure is to commence at 6 a.m. on August 8, 2004, and is expected to last for approximately two weeks. The Auxiliary Chamber is currently being reconstructed and cannot be used as an alternate means to lock vessels through the McAlpine Lock and Dam. This will result in the accumulation of an unusual amount of towing vessels waiting to lock through the McAlpine Lock and Dam.

A regulated navigation area is needed to safeguard vessels and mariners from the hazards associated with extreme congestion in the vicinity of the McAlpine Lock and Dam during its closure and immediately following its re-opening. This regulated navigation area affects mainly towing vessels, however, there will be some impact on recreational vessel traffic. It is anticipated that many

towing vessels will desire to lock through the McAlpine Lock and Dam as soon as possible after re-opening, and this may result in many towing vessels maneuvering dangerously in order to improve their position and reduce the time spent waiting in line. This regulated navigation area will require all vessels entering into, departing from, or moving within the regulated area to contact the Commander, Eighth Coast Guard District or a designated representative prior to taking such action. The Captain of the Port Louisville is the designated representative for the Commander, Eighth Coast Guard District. Additionally, vessels desiring to enter into the regulated area for the purpose of locking through the McAlpine Lock and Dam must follow all orders and directions issued by the Captain of the Port Louisville.

Representatives from the maritime industry will be providing recommendations on vessel movements into or within the regulated navigation area; however, only the Captain of the Port Louisville will give vessel traffic management orders.

While the McAlpine Lock and Dam is closed, all recreational vessels will be permitted to operate within the regulated navigation area and do not have to contact the Captain of the Port Louisville. Once the McAlpine Lock and Dam is re-opened, recreational vessel traffic will not be allowed between mile 602.5 and 607.4, without first

obtaining permission from the Captain of the Port Louisville. This action is necessary to prevent hazardous situations associated with the complexities of moving large towing vessels through an extremely congested area.

Discussion of Rule

The Coast Guard is establishing a temporary regulated navigation area for all the waters of the Ohio River from mile 531.5 to mile 720.7, extending the entire width of the waterway. All vessels entering into, departing from, or moving within the regulated area must contact the Commander, Eighth Coast Guard District or a designated representative prior to taking such action. The Captain of the Port Louisville is the designated representative for the Commander, Eighth Coast Guard District. Vessels desiring to enter into the regulated area for the purpose of locking through the McAlpine Lock and Dam must follow all orders and directions issued by the Captain of the Port Louisville.

While the McAlpine Lock and Dam is closed, all recreational vessels will be permitted to operate within the regulated navigation area and do not have to contact the Captain of the Port Louisville. Once the McAlpine Lock and Dam is re-opened, recreational vessel traffic will not be allowed between mile 602.5 and 607.4, without first obtaining permission from the Captain of the Port Louisville. The Captain of the Port Louisville will inform

the public of the current status of the McAlpine Lock and Dam through broadcast notices to mariners.

The Captain of the Port Louisville may be reached on VHF-FM channels 14 or 13, or by telephone at (812) 288-1784. This regulation is effective from 6 a.m. on August 8, 2004 until 6 p.m. on September 5, 2004.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This regulated navigation area spans a distance of approximately 189 miles and will be effective for 29 days. Vessels are permitted to enter into, depart from, and move within the regulated navigation area provided they contact the Captain of the Port Louisville prior to taking such action. Vessels entering into the regulated navigation area for the purpose of conducting cargo operations at a

waterfront facility, which do not have to lock through the McAlpine Lock and Dam, are not expected to experience any delay. All recreational vessels will be allowed to enter into and move within the safety zone without having to obtain permission from the Captain of the Port Louisville, with the exception of those conditions listed in the DISCUSSION OF RULE section of this preamble. Finally, recreational vessels may use alternate launches in order to transit above or below the McAlpine Lock and Dam.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the waters of the Ohio River between mile 720.7 and mile 531.5, from 6 a.m. on August 8,

2004 until 6 p.m. on September 5, 2004. This rule will not have a significant economic impact on a substantial number of small entities for the reasons enumerated earlier in this preamble.

If you are a small business entity and are significantly affected by this regulation please contact LT Kevin Lynn, Commander, Eighth Coast Guard District, at (504) 589-6271.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This rule calls for no new collection of information

under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that

Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. A new temporary § 165.T08-034 is added to read as follows:

§ 165.T08-034 Regulated Navigation Area; Ohio River Mile Marker 531.5 to Mile Marker 720.7.

(a) Location. The following area is a regulated navigation area: all waters of Ohio River from mile 720.7 to mile 531.5, extending the entire width of the waterway.

(b) Effective date. This section is effective from 6 a.m. on August 8, 2004 until 6 p.m. on September 5, 2004.

(c) Regulations. (1) In accordance with the general regulations in §165.13 of this part, the following applies:

(i) All vessels entering into, departing from, or moving within the regulated area must contact the Commander, Eighth Coast Guard District or a designated representative prior to taking such action. The Captain of the Port Louisville is the designated representative for the Commander, Eighth Coast Guard District.

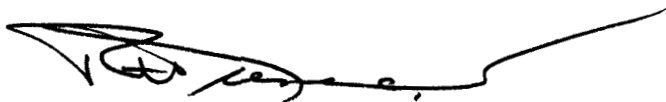
(ii) Vessels desiring to enter into the regulated area for the purpose of locking through the McAlpine Lock and Dam must follow all orders and directions issued by the Captain of the Port Louisville.

(iii) While the McAlpine Lock and Dam is closed, all recreational vessels will be permitted within the regulated navigation area and do not have to contact the Captain of the Port Louisville. Once the McAlpine Lock and Dam is re-opened, recreational vessel traffic will not be allowed between mile 602.5 and 607.4, without first obtaining permission from the Captain of the Port Louisville. The Captain of the Port Louisville will inform the public of the current status of the McAlpine Lock and Dam through broadcast notice to mariners.

(2) The Captain of the Port Louisville may be reached on VHF-FM channels 14 or 13, or by telephone at (812) 288-1784.

(3) Deviation from this section is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the Captain of the Port Louisville.

Dated: AUG 5 2004

A handwritten signature in black ink, appearing to read 'R. F. Duncan', written over a horizontal line.

R. F. DUNCAN
Rear Admiral, U.S. Coast Guard
Commander, Eighth Coast Guard District